IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENNIS M. MURPHY	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	NO. 05-CV-3043
	:	
DEBORAH GATTA	:	

SURRICK, J. **FEBRUARY 10, 2006**

MEMORANDUM & ORDER

Presently before the Court is Defendant's Motion For Summary Judgment (Doc. No. 14). For the following reasons, Defendant's Motion will be denied.

I. BACKGROUND

Plaintiff Dennis M. Murphy is the son of the late Senator George Murphy. Senator Murphy died on May 3, 1992. In his will, Murphy devised all tangible personal property, specifically including jewelry, guns, and personal effects but excluding automobiles, to Plaintiff. (Doc. No. 14 at Ex. B.) In October 2004, Plaintiff learned that some thirty-nine letters written by President Ronald Reagan to Senator Murphy had been placed on auction by a Pennsylvania company. (Compl., Doc. No. 1 ¶ 8.) Plaintiff later learned that Defendant Deborah Gatta, the daughter of Senator Murphy's second wife, had sold these letters to a company in Illinois, which in turn had sold them to the Pennsylvania company. (*Id.* ¶¶ 8-9.)

On April 11, 2005, Defendant executed a release in favor of Plaintiff, in which she represented that the only personal property formerly belonging to Senator Murphy that Defendant had transferred to someone other than Plaintiff were the aforementioned letters from President Reagan, a picture and photographs of President Reagan, and four books signed by President

Richard Nixon. (Pl.'s Mem., Doc. No. 16 at Ex. B.) Plaintiff alleges that after this release was signed, he learned that approximately fifty letters written by President Nixon to Senator Murphy had been purchased by a dealer. (Doc. No. 1 ¶ 12.) Defendant had sold these letters to Sotheby's. (*Id.* ¶ 13.)

Plaintiff brought this diversity action, alleging that, as a result of Defendant's sale of the Reagan and Nixon letters, he has been deprived of property that was rightfully his. Plaintiff also seeks to enjoin Defendant from further sale of what he claims is his property, and seeks a court order requiring Defendant to turn over all effects of Senator Murphy to Plaintiff. (*Id.* ¶¶ 14-15.) Defendant has filed the instant Motion, seeking summary judgment and asserting that the Reagan and Nixon letters were never Plaintiff's property. In the alternative, Defendant argues that Plaintiff's claim is barred by the statute of limitations. (Doc. No. 14.)

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party moving for summary judgment bears the initial burden of demonstrating that there are no facts supporting the nonmoving party's legal position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986). Once the moving party carries this initial burden, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *see also Matsushita Elec.*

Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (explaining that the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts"). "The nonmoving party . . . 'cannot rely merely upon bare assertions, conclusory allegations or suspicions' to support its claim." *Townes v. City of Phila*., Civ. A. No. 00-CV-138, 2001 U.S. Dist. LEXIS 6056, at *4 (E.D. Pa. May 11, 2001) (quoting *Fireman's Ins. Co. v. DeFresne*, 676 F.2d 965, 969 (3d Cir. 1982)). Rather, the party opposing summary judgment must go beyond the pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. When deciding a motion for summary judgment, the court must view facts and inferences in the light most favorable to the nonmoving party. *Anderson*, 477 U.S. at 255; *Siegel Transfer, Inc. v. Carrier Express, Inc*., 54 F.3d 1125, 1127 (3d Cir. 1995). However, we will not resolve factual disputes or make credibility determinations. *Siegel Transfer, Inc*., 54 F.3d at 1127.

III. LEGAL ANALYSIS

Under Pennsylvania law,[1] conversion is defined as the "deprivation of another's right of property, or use or possession of a chattel, or other interference therewith, without the owner's consent and without legal justification." *Universal Premium Acceptance Corp. v. York Bank & Trust Co*., 69 F.3d 695, 704 (3d Cir. 1995) (quoting *Cenna v. United States*, 402 F.2d 168, 170 (3d Cir. 1968)). "When such an act occurs, the plaintiff may bring suit if he or she had either

[1] In a diversity case such as this, the district court must determine which state's substantive law will govern. In making this determination, we apply the conflict of law rules of the forum state. *Kirschbaum v. WRGSB Assocs*., 243 F.3d 145, 150 (3d Cir. 2001). Pennsylvania's choice of law analysis incorporates elements of both the "government interest" and "significant relationship" tests. *Id.* at 151. Both parties have applied the law of Pennsylvania. We agree that the substantive law of Pennsylvania governs this case.

actual or constructive possession or an immediate right to possession of the chattel at the time of the conversion." *Chrysler Credit Corp. v. B.J.M., Jr., Inc*., 834 F. Supp. 813, 844 (E.D. Pa. 1993) (citing *Eisenhauer v. Clock Towers Assocs*., 582 A.2d 33, 36 (Pa. Super. 1990)). Defendant argues that Plaintiff's claim of conversion must fail as a matter of law because Plaintiff has no proof of actual or constructive possession of the letters, books, and photographs in question at the time of the alleged conversion. (Doc. No. 16 at 5.) Specifically, Defendant contends that Plaintiff relies on Senator Murphy's will to establish constructive possession over the subject property, but that Plaintiff cannot prove that this property was in Senator Murphy's possession at the time of his death, and thus cannot prove that the property should be considered part of Senator Murphy's estate. (*Id.* at 5-6.) Defendant also claims that she found the subject documents among her late mother's possessions, and that Plaintiff cannot establish that Defendant's mother was not the lawful owner of the documents. (*Id.* at 6.)

Plaintiff responds that at Defendant's deposition, Defendant did not identify the documents as gifts from Senator Murphy to her mother. (Doc. No. 16 at 6.) In addition, Plaintiff argues that in her correspondence with the auction houses that purchased the letters, Defendant indicated that the Reagan and Nixon letters were from Senator Murphy's estate. (*Id.*) Plaintiff points to caselaw which provides that "the burden of proving an inter vivos gift is placed initially on the putative donee." *Lanning v. West*, 803 A.2d 753, 761 (Pa. Super. 2002) (citing *In re Estate of Pappas*, 239 A.2d 298, 300 (Pa. 1968)). Plaintiff contends that Defendant has not presented any evidence that the documents in question were an inter vivos gift to Defendant's mother, and thus the documents should be considered property of Senator Murphy's estate. (Doc. No. 16 at 7.) However, "[d]onative intent can be inferred from the relationship between

the donor and donee." *Estate of Korn*, 480 A.2d 1233, 1237 (Pa. Super. 1984). In a case involving a disputed inter vivos gift between a daughter and father, the Supreme Court of Pennsylvania held that "[a]s between parties so related, if it appears that there was a voluntary delivery without explanatory words and a retention by the transferee, it can be assumed that there was an intention to give." *Brightbill v. Boeshore*, 122 A.2d 38, 42 (Pa. 1956). Based upon the record as it presently stands, we cannot determine whether Defendant can meet her burden of proving that the documents at issue were an inter vivos gift to her mother. It appears that there is a factual dispute as to whether the documents at issue were the property of Senator Murphy or whether he presented them to Defendant's mother as a gift. Under the circumstances Defendant's Motion must be denied.

Defendant also argues that Plaintiff's claim of conversion is barred by the statute of limitations. Under Pennsylvania law,[2] "[a]n action for taking, detaining or injuring personal property, including actions for specific recovery thereof" must be commenced within two years. 42 Pa. Cons. Stat. § 5524(3). According to Defendant, Plaintiff's cause of action would have accrued when Plaintiff should have been reasonably aware that he had suffered an injury. Defendant argues that Plaintiff had until August 1995 to bring an action for conversion. (Doc. No. 14 at 8.) Defendant appears to have arrived at this date by assuming that the cause of action accrued when the representative of Senator Murphy's estate filed an affidavit with the Florida probate court on August 3, 1993. (Doc. No. 14 at Ex. G.) The affidavit indicated that Plaintiff had received all items bequeathed to him that were in the representative's possession and that all

[2] "Federal courts sitting in diversity cases must apply the substantive law of the states in which they sit, and statutes of limitations are considered substantive." *Ciccarelli v. Carey Canadian Mines, Ltd.*, 757 F.2d 548, 553 (3d Cir. 1985) (citations omitted).

matters regarding the Senator's estate had been settled. (*Id.*) Defendant claims that at the time the estate was settled, Plaintiff was "aware that his father kept a lot of personal effects from the times he spent as a politician and as an actor," including "letters from famous people," but that Plaintiff "did nothing to see if these letters were still in existence." (Doc. No. 14 at 8.) Plaintiff responds that there is no evidence that he was aware of the letters written by Presidents Reagan and Nixon to Senator Murphy at the time the estate was settled. (Doc. No. 16 at 7.) Plaintiff also asserts that the correspondence from the estate's executor to Plaintiff does not indicate that the executor was aware of the existence of the documents at issue in this case. (*Id.* at 7-8.) Thus, Plaintiff concludes, the statute of limitations did not begin to run until late 2004, when the sale of the Reagan letters became public knowledge. (*Id.* at 9.)

"[T]he statute of limitations begins to run as soon as 'the plaintiff knows, or reasonably should know, (1) that he has been injured, and (2) that his injury has been caused by another party's conduct.'" *Bohus v. Beloff*, 950 F.2d 919, 924 (3d Cir. 1991) (quoting *Cathcart v. Keene Indus. Insulation*, 471 A.2d 493, 500 (Pa. Super. 1984)).

> Whether the statute has run on a claim is usually a question of law for the trial judge, but where the issue involves a factual determination, the determination is for the jury. Specifically, the point at which the complaining party should reasonably be aware that he has suffered an injury is generally an issue of fact to be determined by the jury. Only where the facts are so clear that reasonable minds cannot differ may the commencement of the limitations period be determined as a matter of law.

Melley v. Pioneer Bank, N.A., 834 A.2d 1191, 1201 (Pa. Super. 2003). As demonstrated by the allegations above, there is a dispute as to when Plaintiff knew or should have known that he had

a claim for conversion against Defendant. Accordingly, we will deny Defendant's Motion based upon the statute of limitations.

An appropriate Order follows.

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ORDER

AND NOW, this 10th day of February, 2006, upon consideration of Defendant's Motion For Summary Judgment (Doc. No. 14) and all papers submitted in support thereof and in opposition thereto, it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S/R. Barclay Surrick

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R. Barclay Surrick, Judge